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January 13, 1997

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VIA HAND DELIVERY

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W. -- Room 222
Washington, D.C. 20554

Re: Trinity Broadcasting of Florida, Inc.
MM Docket No. 93-75

Dear Mr. Caton:

Enclosed for filing please find an original and 14 copies of two pleadings:

(1) Reply in Support of Petition of Colby May for Leave to Intervene, to File Comments, and to Participate in Oral Argument, together with a Request for Leave to File the same; and

(2) Reply Comments of Intervenor Colby May, together with a Request for Leave to File the same.

Please stamp as filed one additional copy of each of these pleadings and return them with our messenger. Thank you for your consideration.

Very Truly Yours,

Eric Grant

Eric Grant

Enclosures

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RECEIVED
JAN 13 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 93-75
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	BRCT-911001LY
	)	
For Renewal of License of Television Station WHFT(TV) in Miami, Florida	)	
	)	
GLENDALE BROADCASTING COMPANY	)	BPCT-911227KE
	)	
For Construction Permit for a New Television Station in Miami, Florida	)	

To: The Commission

REQUEST FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION OF COLBY MAY FOR LEAVE TO INTERVENE, TO FILE COMMENTS, AND TO PARTICIPATE IN ORAL ARGUMENT

Petitioner Colby May hereby requests leave to file the attached reply in support of his Petition for Leave to Intervene, to File Comments, and to Participate in Oral Argument in the above-captioned proceeding.

On November 15, 1996, Mr. May filed his six-page Petition for Leave to Intervene, to File Comments, and to Participate in Oral Argument. On December 17, 1996, the Mass Media Bureau, Glendale Broadcasting Company, and the Spanish American League Against Discrimination filed oppositions to Mr. May's petition. These oppositions, which collectively totalled seventeen pages, raised new issues concerning the right of Mr. May to participate in this proceeding. For this reason, the public interest would be served by permitting Mr. May to file a four-page reply so that the Commission's decision rests on a complete record.

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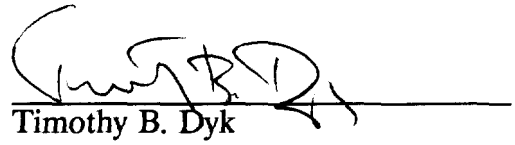
Mr. May's request will not delay this proceeding. The voluminous pleadings already before the Commission require careful consideration. As has been noted by other parties, the elimination of the Review Board has deprived this proceeding of the kind of review previously afforded under the Commission's Rules.

Accordingly, Mr. May respectfully requests that the Commission grant him leave to file the attached reply in support of his Petition for Leave to Intervene, to File Comments, and to Participate in Oral Argument.

Respectfully submitted,



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Counsel for Petitioner Colby May

January 13, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 93-75
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	BRCT-911001LY
	)	
For Renewal of License of Television Station WHFT(TV) in Miami, Florida	)	
	)	
GLENDALE BROADCASTING COMPANY	)	BPCT-911227KE
	)	
For Construction Permit for a New Television Station in Miami, Florida	)	

To: The Commission

REPLY IN SUPPORT OF PETITION OF COLBY MAY FOR LEAVE TO INTERVENE, TO FILE COMMENTS, AND TO PARTICIPATE IN ORAL ARGUMENT

Respondents Mass Media Bureau, Glendale Broadcasting Company ("Glendale"), and Spanish American League Against Discrimination ("SALAD") oppose Colby May's Petition for Leave to Intervene in this proceeding as untimely or unjustified. There is no basis for this opposition.

1. Respondents argue that Mr. May should have moved for intervention before the Mass Media Bureau filed its Consolidated Reply to Exceptions to the Administrative Law Judge's Initial Decision on February 28, 1996. But Mr. May had no reason to seek to intervene before that date. As respondents' own authorities establish, the Commission ordinarily does not consider allegations of attorney misconduct in licensing proceedings but instead refers such allegations for resolution elsewhere. *See Opal Chadwell*, 2 FCC Rcd

3458, 3458 (1987), *cited and quoted in* SALAD Opposition to Petition at 5-6; *see also Scioto Broadcasters*, 5 FCC Rcd 5158, 5161 (1990); *TGE Communications, Inc.*, 3 FCC Rcd 2122, 2124 & n.1 (1988). Where the Commission does directly consider allegations of attorney misconduct, however, it is essential that the attorney be permitted to intervene. Indeed, as the Commission itself has recognized, due process concerns are clearly implicated in such circumstances. *Opal Chadwell*, 2 FCC Rcd at 3458.[1]

2. The Mass Media Bureau did not seek any findings as to Mr. May's supposed misconduct until its February 28, 1996 reply exceptions. Indeed, the Bureau had consistently maintained the position before the Administrative Law Judge that Mr. May had acted in good faith (albeit mistakenly) in representing Trinity Broadcasting Network ("Trinity") and National Minority T.V. ("NMTV") before the Commission. *See, e.g.*, Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law ¶¶ 55, 310-11. It was only in pleadings filed after the Initial Decision of the Administrative Law Judge's that the Bureau reversed itself on this issue. In view of the great weight that might be accorded the Bureau's accusations of attorney misconduct, Mr. May acted appropriately in not seeking to intervene until after the Bureau changed its position and sought findings against him.[2]

---

[1] In *Opal Chadwell*, the Review Board had dismissed an attorney's motion to intervene after "vacat[ing] those portions of an Initial Decision dealing with alleged attorney misconduct." 2 FCC Rcd at 3458. Thus, in contrast to this proceeding, where the Mass Media Bureau's allegations of attorney misconduct remain pending against Mr. May, the attorney in *Opal Chadwell* was relieved of the need to address the allegations against him in the licensing proceeding.

[2] The Bureau asserts that "questions regarding the propriety of [Mr. May's] actions were raised by the Bureau . . . well before the filing of the Bureau's February 1996 Replies to Exceptions." MMB Opposition to Petition at 4. As support for that assertion, however, the Bureau cites only to its prior assertions that Mr. May misconstrued the applicable law, *not* to any prior assertions that Mr. May exhibited a "lack of candor" with the Commission. It was appropriate for Mr. May not to seek to intervene until the Bureau made the latter allegations against him.

3. SALAD, but not the other parties, argues that even if Mr. May's intervention would have been timely following the filing of Bureau's reply exceptions, Mr. May was not justified in waiting until after the filing of the Bureau's opposition to Trinity's motion to vacate on October 25, 1996. *See* SALAD Opposition to Petition at 3-4. Not only does the Bureau itself make no such argument, the argument is meritless. As noted in Mr. May's petition to intervene, counsel attempted to resolve the allegations against Mr. May informally with the Bureau in the interim between the filing of the Bureau's reply exceptions and the filing of its opposition. Only after those efforts proved unsuccessful—as confirmed by the Bureau's references to Mr. May in its October 25, 1996 filing, *see* MMB Opposition to Motion to Vacate the Record on Improvidently Designated Issues at 3, ¶ 5; *id.* at 20, ¶ 33 —did Mr. May have no option but to seek intervention. Again, Mr. May acted appropriately in not seeking to intervene until that time.

4. Respondents argue that Mr. May's position is the same as that of Trinity and NMTV, and therefore that Mr. May cannot contribute to the Commission's consideration of this matter. But Glendale itself has indicated that Mr. May's interest in this matter may not, in fact, be identical to Trinity's and NMTV's. *See, e.g.*, Opposition by Glendale Broadcasting Company to Comments on Behalf of Would-Be Intervenor at 43, ¶ 84 (asserting that Dr. Crouch "attempt[ed] to place the onus on his counsel" for any inadequacies in the disclosures to the Mass Media Bureau).

5. Respondents argue that Mr. May's participation as a party is unnecessary because he could make his views known as a witness. But Mr. May's argument here is a legal, not a factual, one—whether his 1986-87 interpretation of the minority exception to the multiple ownership rule was reasonable based on the authorities available at the time. *See Fox Television Stations*, 10 FCC Rcd 8452, 8486 (1995), *recon. denied*, 11 FCC Rcd 7773 (1996).

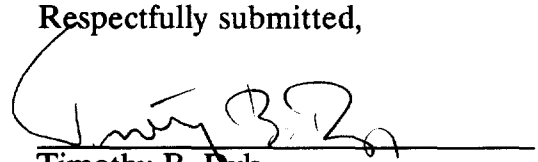
Such arguments are most appropriately presented to the Commission, as well as to any reviewing court, in the form of written comments and oral argument, not testimony.

6. Finally, neither the Mass Media Bureau, nor Glendale, nor SALAD disputes that Mr. May's professional reputation could be severely jeopardized by an adverse finding against him by the Commission. It is vital in such circumstances that an attorney such as Mr. May be afforded an opportunity to present his own position to the Commission through his own counsel. *See, e.g., West Jersey Broadcasting Co.*, 89 FCC 2d 469, 472-73 (1980).

CONCLUSION

The Petition of Colby May for Leave to Intervene, to File Comments, and to Participate in Oral Argument should be granted.

Respectfully submitted,



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Counsel for Petitioner Colby May

January 13, 1997

CERTIFICATE OF SERVICE

I, Timothy B. Dyk of the law firm of Jones, Day, Reavis & Pogue, hereby certify that on this 13th day of January, 1997, copies of the foregoing Reply in Support of Petition of Colby May for Leave to Intervene, to File Comments, and to Participate in Oral Argument, together with the foregoing Request for Leave to File the same, were hand delivered or sent by first-class mail, postage prepaid, to the following:

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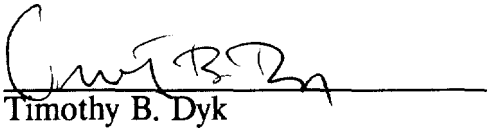

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